

U.S. ENVIRONMENTAL PROTECTION AGENCY  
Region IX

U.S. DEPARTMENT OF TRANSPORTATION  
Federal Highway Administration  
Region 9

MEMORANDUM OF UNDERSTANDING

SOLE SOURCE AQUIFER REVIEW  
pursuant to  
Section 1424(e)  
of the  
Safe Drinking Water Act

This memorandum of understanding (MOU) outlines the sole source aquifer review procedures of the Environmental Protection Agency (EPA) and the Federal Highway Administration (FHWA) for projects funded and/or approved by FHWA within EPA designated sole source aquifer areas in Arizona, California, Hawaii, Nevada, American Samoa, Guam, and the Northern Marianas Islands. These review procedures have been developed to facilitate compliance with Section 1424(e) of the Safe Drinking Water Act. The objective of this MOU is to assure that each project proposal that is to receive Federal financial assistance is designed and constructed in such a manner as to not create a significant hazard to public health, interfere with public welfare, or cause any public water system to install additional treatment facilities to meet the National Primary (or Interim Primary) Drinking Water Regulations.

Sole Source Aquifer Designation

Within 30 days after approval of this MOU, EPA will furnish the FHWA Region Office with three copies of maps and descriptive text for all existing Section 1424(e) sole source aquifers in Region 9. This information shall be of sufficient detail to permit FHWA and the State Highway Agency to determine whether or not a proposed project is within a designated sole source aquifer area.

The EPA will furnish the FHWA Region Office with three copies of similar material for future sole source aquifer areas within 30 days after they are designated.

The EPA will also keep the FHWA Region Office informally apprised of the status of pending sole source aquifer areas under consideration for Section 1424(e) designation.

### Project Coordination

The following types of FHWA projects will receive a Section 1424(e) review by EPA.

1. Projects within a designated sole source aquifer area which are or will be covered by an environmental assessment (EA) or environmental impact statement (EIS).
2. Rest areas or scenic overlooks that include a sewage disposal station which are located within a designated sole source aquifer area.
3. Any project involving a new or existing well within a designated sole source aquifer area.
4. Any other project that FHWA, in consultation with EPA, determines may have a potential to affect the designated aquifer through its recharge zone so as to create a significant hazard to public health.

Unless otherwise determined by FHWA, in consultation with EPA, the following types of FHWA projects will not require a Section 1424(e) review by EPA.

1. All projects outside the map limits of the designated sole source aquifer area.
2. All projects processed as a categorical exclusion (CE) as outlined in Sections 115(b) and 117 of 23 CFR Part 771. Attachment A provides a copy of this citation.
3. All projects in a newly designated sole source aquifer area which have advanced to construction (i.e., the awarding of a contract) prior to the designation.

The following EPA/FHWA coordination activities will be undertaken for the projects identified above as needing a Section 1424(e) review.

### EIS Projects

The FHWA Division Office or the State Highway Agency will provide EPA with a water quality assessment and any other appropriate project information during early project development requesting EPA to make a determination of the project's impact on the quality of the ground water. The cover letter transmitting the water quality assessment to EPA will include a summary statement regarding the project's effect on the sole source aquifer. The draft EIS will document this EPA review and their findings. If a determination has not been made prior to the circulation of the draft EIS, the Section 1424(e) review will be performed by EPA concurrently with their National Environmental Policy Act review of the draft EIS. The final EIS will document the EPA review and findings.

### Non-EIS Projects

For those projects which do not require an EIS, EPA will complete the Section 1424(e) review within 30 days after receipt of the water quality assessment and any other appropriate project information. The cover letter transmitting the water quality assessment to EPA will include a

summary statement regarding the project's effect on the sole source aquifer. The Finding of No Significant Impact or other FHWA approval will document the EPA review and findings. If EPA cannot complete its review within 30 days, EPA will notify the FHWA or State Highway Agency office requesting the review and a mutually agreeable review completion date will be established.

#### Projects Under Development When an Aquifer is Designated

Projects which have not received FHWA environmental clearance at the time the aquifer is designated will receive a Section 1424(e) review as described above, provided the draft EIS or EA has not been made available to government entities and the public. If the draft EIS or EA has been circulated or made available, EPA will complete the Section 1424(e) review within 30 days after receipt of a water quality assessment and any other necessary project information. The cover letter transmitting the water quality assessment to EPA will include a summary statement regarding the project's effect on the sole source aquifer. If EPA cannot complete its review within 30 days, EPA will notify the FHWA or State Highway Agency office requesting the review and a mutually agreeable review completion date will be established. The FHWA environmental clearance of the project will document EPA's review findings.

For those projects which have received FHWA environmental approval but have not advanced to construction (i.e., the awarding of a project construction contract), the appropriate EPA and FHWA contact people will meet or coordinate by telephone to determine whether or not a Section 1424(e) EPA review is needed and, if so, what information is needed for the review. The EPA will complete any needed reviews within 30 days after receipt of this information. If EPA cannot complete its review within 30 days, EPA will notify the FHWA or State Highway Agency office requesting the review and a mutually agreeable review completion date will be established.

Unless otherwise determined by FHWA, in consultation with EPA, projects which have advanced to construction will not require a Section 1424(e) review by EPA.

#### Conflict Resolution

Any conflict which may arise concerning the sole source aquifer aspects of a proposed project or the review process outlined in this MOU will be resolved through consultation between the EPA and FHWA Regional offices.

#### Agency Contacts

The EPA and FHWA contacts for sole source aquifer matters are provided in Attachment B. Each agency will inform the other in writing of any changes in contact people. Changes in contact people will not necessitate a revised or new MOU to be executed.

Materials furnished to EPA by FHWA or the State Highway Agency under this MOU will be addressed to the appropriate EPA contact person listed in Attachment B.

Written Section 1424(e) review responses by EPA will be addressed to the FHWA or State Highway Agency office requesting the review with informational copies to the appropriate FHWA Division and Region Office contacts.

MOU Revision

This Memorandum of Understanding is subject to revision upon agreement of both parties. Changes to EPA or FHWA regulations or procedures which bear on the provisions of this MOU will be reviewed by both EPA and FHWA to determine if revisions to this MOU are needed. This MOU will remain in effect until terminated by a 30-day written notice by either party.

MOU Approval

22 OCT 1984

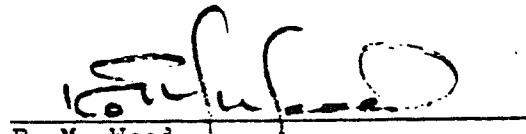
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Date

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Date



Judith E. Ayres  
Regional Administrator  
Environmental Protection Agency  
Region IX



E. M. Wood  
Regional Administrator  
Federal Highway Administration  
Region 9

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a record of decision, when required, has been prepared and signed; and

(2) For FHWA actions, the FHWA Division Administrator has received and accepted the public hearing transcripts, reports and certifications required by 23 U.S.C. 128.

(b) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by the FHWA after consultation with the applicant.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMTA Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. The scope of the environmental document must address the entire project covered by the proposed Letter of Intent. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

## § 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EIS's)*. Actions that may significantly affect the environment require an EIS. (40 CFR 1508.27) Examples of these actions are:

(1) Any new controlled access freeway.

(2) Any highway project of 4 or more lanes on a new location.

(3) New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway). These projects would be expected to cause major shifts in travel patterns and land use.

(4) Major transportation related development whose construction involves a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns. This classification will take account of the condition of the buildings and availability of comparable replacement facilities for displaced residences or businesses.

(b) *Class II (Categorical exclusions)*. Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions:

(1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment.

(2) Grants for training and research programs which do not involve construction.

(3) Approval of a unified planning work program and certification of a State or local planning process. 23 CFR Part 450.

(4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A.

(5) Approval of project concepts under 23 CFR Part 476.

(6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

(7) Federal-aid highway system revisions under 23 U.S.C. 103 which establishes classes of highways on the Federal-aid highway system.

(8) Approval of utility installations along or across a transportation facility.

(9) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location (e.g., widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Reconstruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands.

(10) Construction of bicycle and pedestrian lanes, paths, and facilities.

(11) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.

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(12) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), and correcting substandard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(14) Highway safety or traffic operations improvement projects including the correction or improvement of high hazard locations; elimination of roadside obstacles; highway signing; pavement markings; traffic control devices; railroad warning devices; and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(15) Alterations to existing buildings to provide for noise reduction and the installation of noise barriers.

(16) Ridesharing activities and transportation corridor fringe parking facilities.

(17) Landscaping.

(18) Program administration and technical assistance activities by the applicant to administer Section 18 funds. (Rural public transportation program)

(19) Project administration and operating assistance to transit authorities to continue existing service or increase service to meet demand.

(20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion.

(21) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no sub-

stantial increase in the number of users.

(23) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

(24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

(25) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(26) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur. For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.

(27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by Section 3 of Executive Order 12044.

(28) Research activities as defined in 23 U.S.C. 307.

(29) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster or catastrophic failure.

(c) *Class III (EA's)*. Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required, unless it can be initially determined that an EIS should be prepared. In the case of rules, regulations, or directives for

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which a regulatory analysis is required by Section 3 of Executive Order 12044, the EA may be contained in the regulatory analysis and need not be a separate document.

## § 771.117 Categorical exclusions.

(a) Categorical exclusions are categories of actions which do not involve significant environmental impacts or substantial planning, time or resources. These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources. The categorical exclusions are listed in § 771.115(b).

(b) Any recommendation by an applicant that a proposed action is a categorical exclusion as identified in § 771.115(b) must be approved by the Administration. The Administration may require sufficient information to determine if the proposal meets the criteria for a categorical exclusion. Proposals meeting the criteria for categorical exclusions do not require additional environmental documentation.

(c) The Administration may determine that any action proposed as a categorical exclusion may, because of extraordinary circumstances, require appropriate environmental studies to establish the need for an EIS. Extraordinary circumstances includes situations that are likely to involve:

- (1) Significant impacts on the environment;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impacts on properties protected by Section 4(f) of the DOT Act and Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(d) An applicant may propose that additional categories of actions be added to the list of categorical exclusions in § 771.115(b). Such proposals shall be submitted to the Administration headquarters office for approval and will be processed in accordance with 40 CFR 1507.3.

145 FR 71977, Oct. 30, 1980; 45 FR 85449, Dec. 29, 1980]

## § 771.119 Environmental assessments.

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant in consultation with the Administration will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives: Define the scope of the project; identify alternatives to the proposed action; determine which aspects of the proposed action have potential for environmental impact; identify measures and alternatives which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be prepared concurrently with the EA. The applicant will accomplish this through an early coordination process (i.e., procedures under § 771.111), or through a scoping process. A summary of the contacts made and comments received will be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. If the EA is made available prior to Administration approval, it must be labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses.

(e) When a public hearing is required, the environmental assessment (EA) will be prepared in advance of the notice of public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing require-

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ments are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accord with 23 CFR 771.111(h). The Urban Mass Transportation Administration (UMTA) has a public hearing requirement in all applications for capital and operating assistance.

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties including those who believe that the action involves a significant impact on the human environment or that the analysis of social, economic, and environmental impacts presented in the EA is inadequate to assess their significance. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.115(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for public review (including State and areawide clearinghouses) for 30 days before the Administration makes its final decision. (See 40 CFR 1501.4(e)(2)) This public availability will be announced by a notice similar to a public hearing notice at least 30 days before any decision on the EA is made. The EA will be provided to the Administration Washington Headquarters at the same time it is made available to the public.

(23 U.S.C. 109(h), 123, 138, and 315; 49 CFR 1.48(b)).

[45 FR 71977, Oct. 30, 1980, as amended at 47 FR 21783, May 20, 1982]

## § 771.121 Findings of no significant impact.

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendations, will make a separate written finding of no significant impact (FONSI) incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI had been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately identified and assessed, the Administration will issue its own FONSI incorporating the other agency's FONSI.

## § 771.123 Draft environmental impact statements.

(a) A DEIS will be prepared when the Administration determines initially that the action may cause significant impacts on the environment, when the environmental studies and early coordination for the action indicate significant impacts, or when the review of the EA in light of comments received indicates the impacts expected to result from the action may be significant. When the decision has been made by the Administration that an EIS will be prepared, the Administration will issue a notice of intent for publication in the FEDERAL REGISTER. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the notice of intent, the Administration in coopera-